In The

Supreme Court of the United States

October Term

No. 72-280

LIDA MOJAR,

Petitioner,

vs.

PETER A. SIGNORELLI, Et Ux,

Respondents.

BRIEF OF RESPONDENTS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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APPENDIX

Consent of Natural Mother to Adoption (PL-E-1, R.114) 1a

In The

Supreme Court of the United States

October Term, 1972

No. 72-280

LIDA MOJAR, Natural Mother,

Petitioner,

vs.

PETER A. SIGNORELLI, Et Ux,

Respondents.

Jurisdiction

Recognizing that Rule 19 does not state every possible reason for Certiorari, nevertheless, the main test in a petition of this type is that "...a State Court has decided a Federal question in a way probably not in accord with applicable decisions of this Court."

It is respectfully submitted that it is well settled law that adoption with or without the consent of natural parents is recognized where there has been notice of hearing, and a hearing.

In the instant case, there was a full trial. Petitioner and her present spouse testified and in addition presented two fact witnesses and one expert witness. Respondents both testified and in addition presented two fact witnesses and one expert witness, and a pediatrician who was both witness to facts and also an expert. Separate from depositions, there was two full days of trial and all witnesses were examined and cross-examined at length. The trial transcript, exclusive of depositions and motions is 312 pages.

Counterstatement

Petitioner contends that the transcript of the hearing below "is replete with reference to the pressures which were brought to bear on the petitioner to give her son up for adoption, and the repeated efforts on her part to retain his custody." Such reference in the transcript are to petitioner's own direct testimony. The records also show that respondents were not the first people to whom petitioner offered her child for adoption. The transcript also shows that petitioner had advice of her own counsel. When respondents first spoke to petitioner about the adoption, petitioner told respondents to look at the child and be sure that respondents wanted the child.

After the petitioner had agreed by telephone to give her child to respondents for adoption, there was a delay of some five days because petitioner wanted to consult her attorney about the consent to adoption agreement (R1a). Petitioner did not give over her child for adoption until

after she had gone over the matter with her own attorney and executed a formal agreement consenting to the adoption.

The transcript also shows through two disinterested witnesses that petitioner was not under pressure to give up her son and in fact turned down an opportunity to live with one of the witnesses (a divorced mother at the time) and take care of petitioner's child and the witnesses'. She chose to give her child up for adoption instead.

Argument in Opposition to Granting of Writ of Certiorari

The crux of petitioner's argument is that Ninth Amendment rights are violated. In support of this argument, petitioner relies on Meyer v. State of Nebraska, 262 U.S. 390, 399; Portnoy v. Strasser, 303 N.Y. 539, 542, as authority. However, Meyer construed a statute prohibiting the teaching of German. This Court in listing some of the rights protected by the Fourteenth Amendment stated that a protected right was that to marry, establish a home and bring up children. Portnoy was an action by a maternal grandmother to take a child away from its natural mother because the natural mother, a Caucasian was married to a Negro, and in addition was a communist. The Trial Court found as the facts in Portnoy that the child was well adjusted in a healthful and sufficient home and even though the child received no religious training, based on Meyer, the natural mother had control of religious training. Even that case recognized that

the child could have been taken away from the natural mother if there would have been proof of neglect.

Spence-Chapin Adoption Service v. Polk, 29 N.Y. 2d 196, 203, advanced by petitioner dealt with a foster home where an unwed mother gave her child up for temporary care and not adoption. That very case recognized that where permanent custody is gained by adoption, a natural parent's right could be and were cut off.

Petitioner cites the New Jersey Adoption Act as requiring a finding of "abandonment" and suggest that the instant case does not fit the statutory test. This question was passed upon and settled by the New Jersey Supreme Court in La Vigne v. Family and Children Society of Elizabeth, 11 N.J. 473 (1953), where the Court discussed the very question as to the meaning of abandonment. The Court held that it did not mean desertion or even that a natural parent has ceased to feel any concern for its infant. A settled purpose to forego all parental duties and relinquish all parental claims to a child is an abandonment within the settled law of New Jersey, and a consent for a child to be given for adoption might be deemed by the Court as an irrevocable abandonment. La Vigne at 481.

The Appellate Division of the Superior Court found there was "substantial credible evidence in the records to support the conclusion that the natural mother knowingly, willingly and freely surrendered her child for adoption by the adopting parents. The Appellate Court also found that

the record amply supported the conclusion that it was in the best interest of the child that it be permitted to remain with its adopting family, citing In re P. and Wife, 114 N.J. Super. 584 (App. Div. 1971) (R-14a).

It is the practice in New Jersey in appeals where there is a verbatim transcript for a copy to be filed with the Appellate Court (Rules of Practice 2:5-3). The record on appeal consists of all papers, filed below, all entries made on the record below, and the stenographic transcript where there is one N.J. R2:5-4 of Court. The Appellate Division, therefore, reviewed the entire record and not just the briefs and excerpts of testimony.

The crux of petitioner's argument is that since Meyer recognized that there is a protected right to marry, establish a home and bring up children, therefore, there is a presumption that a natural mother has a fundamental right to custody of her child and a child has a right to his mother.

The issue before the Court is not inconsistent with Griswold v. State of Connecticut, 381 U.S. 479, 492-496; Stanley v. Illinois, 405 U.S. 645; Prince v. Massachusetts, 321 U.S. 158, 166; or Meyer, supra. It is not the integrity of the family unit, or the right of a child at first instance to reside with his parents which is before the Court. The issue that was presented below after examination and cross-examination was whether a parent in fact gave up her child for adoption and that being established, was it then

in the best interest of the child for that child to be given to respondents permanently so that a new family unit may be established.

Whether or not there is a presumption which is a Ninth Amendment right is beside the point. The New Jersey Courts have recognized that the natural parents' have a most important and basic right, and so do adopting parents, and the child also has rights. To say the child's welfare is paramount is only to put the matter in perspective. It is the natural mother who puts the matter afoot. It she did not knowingly, willingly and freely surrender her child for adoption as the Appellate Division of the Superior Court found, the matter would not be in litigation at all.

It is not the rights of a parent as an abstract proposition of law that is before this Honorable Court. What is before this Court is a specific case on a specific record in which a Trial Court found in favor of respondents and the Appellate Division on review held there was substantial, credible evidence in the record to support the conclusions as to a knowingly, willing and free surrender of the child and to support the ultimate conclusions that the adoption be approved. The Supreme Court of New Jersey, by denying Certification, concurred.

Conclusion

For the foregoing reasons, it is respectfully submitted that the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

ERNEST GROSS

Attorney for and
Counsel to
Respondents

APPENDIX

Consent of Natural Mother to Adoption

MIDDLESEX COUNTY COURT
PROBATE DIVISION

In the Matter of :

THE ADOPTION AND CHANGE OF NAME OF A CHILD BY PETER A. SIGNORELLI AND JO-ANN SIGNORELLI, husband and wife :

WHEREAS, I, LIDA DAVIS, am the natural mother of an infant born on the 22nd day of June, 1968, in Brooklyn, New York; and

WHEREAS, the name of the said infant child is STEPHEN JAY DAVIS; and

WHEREAS, this child was born out of wedlock; and

WHEREAS, I am desirous of placing the said child for adoption and of allowing the adopting parents to change the name of the said child to their own name;

NOW, THEREFORE, this writing is to witness, certify and acknowledge that I, LIDA DAVIS, age 23 years, and presently residing at 2819 West 17 Street, Brooklyn, New York, the natural mother of said infant, do hereby consent in writing that my said infant, STEPHEN JAY DAVIS, may be legal-

ly adopted for all intents and purposes by the said PETER A. SIGNORELLI and JO-ANN SIGNORELLI, husband and wife; that the said adopting parents may change the name of my infant child from STEPHEN JAY DAVIS to STEPHEN PETER SIGNORELLI; that henceforth the said PETER A. SIGNORELLI and JO-ANN SIGNORELLI, husband and wife, shall be jointly vested with all the obligations, duties, rights and powers with reference to my said infant child, the same as if the said child were born to them.

I hereby certify and acknowledge voluntarily and of my own free will and accord that I will never in any way, at any time or place, claim or assert any claim, privilege or right to the care, custody or control of my said infant child, it being understood and agreed that I am hereby and forever divesting myself of any right, privilege or claim in connection with the care, custody, control or any other interest in and for the said infant.

The reason for my giving this writing and acknowledged consent to the adoption of my said child by the adopting parents as hereinbefore named is that I conceived this child out of wedlock and am unable to support and maintain the same and have no means of providing the economic necessities for this child. I am confident and satisfied that the best welfare and interest of this child will be promoted by this adoption, the adopting parents having the facilities, personal qualities and financial resources to give the child a sound, permanent and advantageous home atmosphere.

Consent of Natural Mother to Adoption

I further state that I was born of the Roman Catholic faith and that I concur and approve that my said child being adopted by the adopting parents as hereinbefore mentioned, shall be brought up in the Roman Catholic faith.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 18th day of February, 1969.

s/ Lida Davis (L.S.)

STATE OF NEW YORK :
:SS.
COUNTY OF KINGS :

BE IT REMEMBERED, that on this 18th day of February, 1969, before me, the subscriber, personally appeared LIDA DAVIS, who, I am satisfied, is the person mentioned in the within Instrument, and thereupon she acknowledged that she signed, sealed and delivered the same as her act and deed, for the uses and purposes therein expressed.

s/ Samuel M. Koren

SAMUEL M. KOREN
Notary Public, State of New York
No. 24-7338600 — Qual. in Kings County
Commission Expires March 30, 1970